



Paper No. 11

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TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY, UT 84110

In re Application of
Wood, et al.
Application No. 10/005,402
Filed: February 1, 2002
Atty. Dkt. No.: 2825.10US
(90-0051.12)

OFFICE OF PETITIONS
ON PETITION

This decision in response to the petition filed February 1, 2002 and resubmitted March 19, 2003 in response to the Notice of Omitted Items in a Nonprovisional Application ("Notice") mailed December 26, 2001. This response is being treated as a petition to accord the above-referenced application a filing date of December 5, 2001 instead of the presently accorded filing date of February 1, 2002.

The application was deposited December 5, 2001. The Notice mailed December 26, 2001 by the Office of Initial Patent Examination notified applicant that the application had been accorded a filing date but that Figure 4 as described in the specification appeared to have been omitted from the application.

The Notice permits applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

Petitioner's response to the Notice was received by the Office on February 1, 2002. The Office apologizes for the delay in addressing this matter which was not brought to the attention of the Office of Petitions until March 19, 2003.

Petitioner argues the application as filed included Figure 4 and has included as proof of mailing and proof of receipt of the item in question a return postcard date stamped by the Office on December 5, 2001. The return postcard indicates, among other items, the receipt of three sheets of formal drawings containing 6 figures. Petitioner provided a copy of the omitted Figure 4 on February 1, 2002.

A review of the official application reveals that petitioner is correct in that the Office did in fact receive three sheets of formal drawings containing 6 figures (specifically, Figures 1A, 1B, 1C, 2A, 2B, and 3). The Office did not receive a copy of Figure 4 as referenced in the specification until February 1, 2002. Applicant is therefore entitled to a filing date of February 1, 2002, the date of receipt of the omitted figure.

Accordingly, for the reasons set above, the petition to accord the above-identified application a filing date of December 5, 2001 is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTH** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are not permitted.

This application will be retained in the Office of Petitions for **TWO (2) MONTHS**. If no renewed petition is received within that time period, this application will be forwarded to the Publications Division for processing into a patent with a filing date of February 1, 2002.

Any correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile:

(703) 308-6916

By hand:

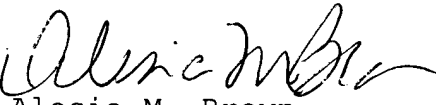
Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

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Arlington, VA 22202

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions


Alesia M. Brown
Petitions Attorney
Office of Petitions